

General instructions**Filing requirements**

A fiduciary for a resident estate or trust, or a fiduciary for a nonresident estate or trust which derives income from North Dakota sources, must file Form 38, North Dakota Fiduciary Income Tax Return, if required to file Federal Form 1041.

Resident estate or trust. A fiduciary for a resident estate or trust is generally subject to the same law provisions which apply to a resident individual. The entire income (loss) of a resident estate or trust must be reported to North Dakota.

Nonresident estate or trust. A fiduciary for a nonresident estate or trust is generally subject to the same law provisions which apply to a nonresident individual. Only the portion of the nonresident estate's or trust's income (loss) derived from North Dakota sources must be reported to North Dakota.

Employer identification number. For North Dakota purposes, use the same employer identification number used on the federal return.

Signature. The fiduciary or an authorized representative of the fiduciary must sign the return. If a person other than the fiduciary is paid to prepare the return, the paid preparer must also sign the return.

Which schedule to use. Either Schedule 1 (Short Method) or Schedule 2 (Long Method) may be used to calculate the tax. The two methods will yield different results, so it is recommended that the tax be calculated under both methods. Use the method showing the lowest tax.

When to file and pay

A return for the calendar year 1998 must be filed on or before April 15, 1999. A return filed on a fiscal year basis must be filed on or before the fifteenth day of the fourth month following the end of the fiscal year. If the due date falls on a Saturday, Sunday or legal holiday, the return is due on the next business day. Tax due on the return must be paid in full with the return.

Extension of time to file. If an extension of time to file the federal fiduciary income tax return is obtained, it will be recognized by North Dakota. Or, if a federal extension isn't needed, a separate North Dakota extension may be applied for using

Form F-101. The North Dakota extension is not automatic—there must be good cause to request one. Apply early enough to obtain approval prior to the due date of the return. At the time Form 38 is filed, check the extension box at the top of Form 38 and attach a copy of the federal extension form or the approved state extension, whichever one applies. If there is tax due on the return, interest is charged at the rate of 12% per year from the original due date of the return to the earlier of the extended due date or the date the tax due is paid.

Where to file and pay

Form 38 must be filed with the Office of State Tax Commissioner, State Capitol, 600 E. Blvd. Ave., Bismarck, North Dakota 58505-0599. Make the check or money order payable to "State Tax Commissioner."

Penalty and interest. By law, penalty and interest must be charged on a late payment of tax. The penalty is 5% of the late payment (with a minimum of \$5.00). In addition, interest on the late payment is charged at the rate of 1% per month or a fraction of a month (except for the month in which the tax was due) until the tax due is paid.

Estimated income tax

A fiduciary may have to pay estimated North Dakota income tax for 1999 if:

1. The fiduciary is required to pay estimated federal income tax for 1999; and,
2. The fiduciary's net tax liability for 1998, and the estimated balance due (after withholding but before estimated tax is subtracted) for 1999 is \$200 or more. *(If no return is required to be filed for 1998, no estimated tax payments are required for 1999.)*

If both of the above apply, obtain North Dakota Form 401-ES to determine the amount of estimated tax, if any, that must be paid, and for when and how to pay the estimated tax.

Beneficiaries

A beneficiary of an estate or trust that is required to file Form 38 may be required to file a North Dakota income tax return to

report the income (loss) distributed or distributable to the beneficiary.

Resident individual. A resident individual must report to North Dakota his or her entire share of income (loss) from any estate or trust (whether or not a Form 38 is required), as determined for federal income tax purposes.

Nonresident individual. A nonresident individual must report to North Dakota the portion of the income (loss) from an estate or trust that is derived from North Dakota sources. This includes the same kinds of income (losses) that would be reportable to North Dakota had the nonresident individual derived them directly from the North Dakota sources.

Other entities. If a beneficiary is a corporation, partnership, or other type of entity, see the instructions to the applicable North Dakota income tax return for filing and reporting requirements.

Information returns

Every fiduciary having a requirement to file a Federal Form 1099 or a Federal Form W-2 must also file one with North Dakota. For details, obtain the *Income Tax Guideline: Information At The Source Return Requirements And Procedures*.

Amended returns

Check the "Amended return" box at the top of Form 38 if it is being filed to correct a previously filed Form 38. If an amended Federal Form 1041 is filed or the Internal Revenue Service makes changes to Federal Form 1041, an amended Form 38 must be filed within ninety days after filing the amended federal return or within ninety days after the final determination of the IRS changes.

Where to get forms and assistance

For forms or assistance, call toll free (within North Dakota) 1-800-638-2901. The local number is (701)328-3450. The speech or hearing impaired may call through Relay North Dakota at 1-800-366-6888 (*ask for 1-800-638-2901*). Or write to: Office of State Tax Commissioner, State Capitol, 600 E. Blvd. Ave., Bismarck, ND 58505-0599.

General instructions continued

Internet web site

You may obtain forms and guidelines, submit questions and comments, and find other useful information on our Internet web site. The address is:

www.state.nd.us/taxdpt

Federal Privacy Act

In compliance with the Federal Privacy Act of 1974 (Public Law 93-579), the disclosure of the federal employer identification number of the estate or trust on this form is mandatory and is required under subsections 1 and 7 of North Dakota Century Code

§ 57-38-31. A federal employer identification number is used as an identification number by the Office of State Tax Commissioner for file control purposes, recordkeeping, and for cross-checking a taxpayer's files with the Internal Revenue Service.

Specific instructions

Steps to completing Form 38

1. Complete the top portion of Form 38 (fiduciary name, address, employer identification number, etc.).
2. Complete either Schedule 1 (Short Method) or Schedule 2 (Long Method). See "Which schedule to use" under "Filing requirements" on page 1 of these instructions. **Do not complete both schedules on the return filed.**
3. Complete lines 10 through 20 on page 1 of Form 38.
4. If the estate or trust has one or more beneficiaries, complete Schedule 3 on page 2 of Form 38.

Specific line instructions for Schedule 1 (Short Method)

(Page 1, Form 38)

Line 1

Enter the federal income tax liability from Federal Form 1041, Schedule G, line 1c plus line 6 less line 2d; however, the amount from line 6 may be reduced (but not below zero) by the amount of investment credit, if any, included on line 2c. Also include any taxes computed on Federal Forms 4970 and 5329 included in the total tax on line 8, Schedule G, Federal Form 1041.

Recomputation of federal income tax liability.

If a nonresident estate or trust has losses from sources outside North Dakota that exceed its income from sources outside North Dakota, the federal income tax liability may have to be recomputed before entering it on this line. For details, obtain North Dakota Schedule 7.

Line 3

Resident only

Enter interest income from U.S. obligations and other securities exempt from state income tax under federal law. Also enter the portion of dividend income from a regulated

investment company (mutual fund) that is attributable to the mutual fund's investment in the same kinds of securities. Unless already identified on the federal income tax return (attached to Form 38), attach a statement specifically identifying the securities or specifically identifying the mutual fund and the percentage of income derived from qualifying securities. In the case of a mutual fund, both the mutual fund and the securities held by the fund must be identified. A copy of a year-end statement from a mutual fund or broker will satisfy this identification requirement if it contains the requisite information.

Line 4

Nonresident only

Enter the portion of the fiduciary's income (loss) on line 2 that is not reportable to North Dakota. Do not complete this line if required to complete Schedule 7 (see line 1 instructions).

Line 5

The following items may be entered on this line, but only to the extent the income is included on line 2:

- Income earned by a Native American while living and working on the Indian reservation where enrolled.
- Payments received from the U.S. Railroad Retirement Board. **Attach a copy of Federal Form RRB-1099, RRB-1099-R, or both.**
- Amount of income or loss from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation, Partnership or LLC Subject to N.D.C.C. ch. 57-35.3. Attach a copy of the statement from the pass-through entity to substantiate the adjustment.*

Specific line instructions for Schedule 2 (Long Method)

(Page 2, Form 38)

Line 4

Enter the following on this line:

- Except for North Dakota and its political subdivisions, interest from state and local government obligations that is exempt from federal income tax. Include the portion of dividends received from a regulated investment company (mutual fund) that is attributable to the mutual fund's investment in the same kinds of obligations.
- State and local income taxes deducted in determining federal taxable income.
- Lump-sum distribution from a qualified retirement plan that is reported on Federal Form 4972.
- Amount of loss from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation, Partnership or LLC Subject To N.D.C.C. ch. 57-35.3. Attach a copy of the statement from the pass-through entity to substantiate the adjustment.*

Line 6

The following items may be entered on this line, but only to the extent the income is included on line 1:

- Interest income, up to a maximum of \$300, received from a North Dakota financial institution.
- Interest income from U.S. obligations and other securities exempt from state income tax under federal law. Also enter dividend income from a regulated investment company (mutual fund) to the extent attributable to the mutual

Specific instructions continued

- fund's investment in the same kinds of securities. Unless already identified on the federal income tax return (attached to Form 38), attach a statement specifically identifying the securities or specifically identifying the mutual fund and the percentage of income derived from qualifying securities. A copy of a year-end statement from a mutual fund or broker will satisfy this identification requirement if it contains the requisite information.
- Allowable deductions for the sale or lease of land to a qualifying beginning farmer or for the sale or lease of a revenue-producing enterprise to a qualifying beginning businessman. To determine eligibility for these deductions, obtain the *Income Tax Guideline: Beginning Farmer Income Tax Deductions* and the *Income Tax Guideline: Beginning Businessman Income Tax Deductions*. **Attach a copy of the Beginning Farmer Statement or Beginning Businessman Statement to substantiate the deduction(s).**
 - Dividends, up to a maximum of \$15,000, from a corporation that has paid North Dakota income tax under N.D.C.C. ch. 57-38 or North Dakota financial institution tax under N.D.C.C. ch. 57-35.3. If the corporation does not conduct 100% of its business in North Dakota, the amount otherwise allowed must be multiplied by the corporation's percentage of business conducted in North Dakota to determine the amount to enter on this line. The percentage of business conducted in North Dakota is equal to the corporation's apportionment factor reported on the corporation's North Dakota tax return. Contact the corporation to obtain this information.
 - Amount of investment, up to a maximum of \$5,000, in a venture capital corporation under N.D.C.C. ch. 10-30.1. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**
 - Income earned by a Native American while living and working on the Indian reservation where enrolled.
 - Taxable portion of payments from the U.S. Railroad Retirement Board. **Attach**

copy of Federal Form RRB-1099, RRB-1099-R, or both.

- Gain from sale of property due to the exercise of eminent domain.
- Income exempt from income tax under N.D.C.C. ch. 40-57.1.
- Amount of income from a pass-through entity subject to the North Dakota financial institution tax. For details, obtain the *Income Tax Guideline: Adjustment For Income (Loss) From S Corporation, Partnership or LLC Subject To N.D.C.C. ch. 57-35.3*. **Attach a copy of the statement from the pass-through entity to substantiate the adjustment.**

Line 8

Enter the federal income tax from Federal Form 1041, Schedule G, line 4 plus line 2a plus line 5 plus any taxes computed on Federal Forms 4970 and 5329 included in the total on line 8.

Line 10

Enter the amount from line 6; however, do not include any amount deducted for an investment in a venture capital corporation.

Line 14**Nonresident only**

A nonresident estate or trust must prepare a separate schedule on which it calculates the North Dakota income (loss) to enter on this line.

The North Dakota income (loss) of a nonresident estate or trust is generally calculated in the same manner as for a resident estate or trust, except that only the income, deductions, and other adjustments attributable to North Dakota are taken into account. Itemized deductions, such as interest, taxes, and fiduciary fees, etc., are to be attributed to North Dakota based on the ratio of North Dakota income to total federal income.

For a nonresident estate or trust, the federal income tax that may be deducted is determined in the same manner as for a resident estate or trust (see line 8), with the following modifications:

- Do not include the federal foreign tax credit; and,

- Multiply the total allowable federal income tax by the ratio of North Dakota income to total federal income to determine the deductible portion.

Attach a statement showing how the North Dakota income (loss) was calculated.**Line 15**

Enter the portion of the North Dakota income (loss) on line 14 distributed or distributable to the beneficiaries of the estate or trust. For North Dakota purposes, this is based on the amount distributed or distributable for federal income tax purposes. In addition, in determining this amount, North Dakota additions (on line 4) and North Dakota subtractions (on line 6) must be included to the extent they relate to the income (loss) distributed or distributable to the beneficiaries.

Line 18

If a contribution is made to a nonprofit private high school in North Dakota, a credit is allowed equal to the lesser of the following:

- 50% of the total contributions; or,
- 40% of the tax on line 17, Schedule 2, Form 38; or,
- \$250.

If a contribution is made to a nonprofit private college in North Dakota or to the North Dakota Independent College Fund, a credit is allowed equal to the lesser of the following:

- 50% of the total contributions; or,
- 40% of the tax on line 17, Schedule 2, Form 38; or,
- \$250.

A contribution may be made up to the due date (including extensions) for filing Form 38. In addition, a copy of a receipt or canceled check (front and back) must be attached to substantiate the contribution.

Credits are also allowed for installing a geothermal, solar or wind energy device on North Dakota property and for paying wages to a developmentally disabled or chronically mentally ill person employed in North Dakota. For details, contact the Office of State Tax Commissioner.

Specific instructions continued

Specific line instructions for lines 10 through 20

(Page 1, Form 38)

Complete either Schedule 1 or Schedule 2 before completing these lines.

Line 11 Resident only

If income tax is paid to another state, the District of Columbia, or a territory of the United States, a limited credit may be allowed. Complete Schedule 4 on page 2 of Form 38 to determine the allowable credit. **Attach a copy of the other jurisdiction's income tax return to substantiate the credit.**

Line 13 Schedule 2 filer only

Enter the amount of the credit allowed for investment in a venture capital corporation under N.D.C.C. ch. 10-30.1. See the investment reporting form provided by the corporation for how to compute the credit. **Attach a copy of the Venture Capital Corporation Investment Reporting Form.**

Line 14 Schedule 2 filer only

Enter the amount of the credit allowed for investment in the North Dakota Small Business Investment Company (SBIC) under N.D.C.C. ch. 10-30.2. See the investment reporting form provided by the SBIC for how to compute the credit. **Attach a copy of the North Dakota SBIC Investment Reporting Form.**

Line 15 Schedule 2 filer only

Enter the amount of the credit allowed for investment in a nonprofit development corporation under N.D.C.C. § 10-33-124. See the investment reporting form provided by the corporation for how to compute the credit. **Attach a copy of the Nonprofit Development Corporation Investment Reporting Form.**

Line 16 Schedule 2 filer only

Enter the amount of the credit allowed for investment in a business certified by the Director of Economic Development and Finance as a qualifying business for the seed capital investment credit under N.D.C.C. ch. 57-38.5. See the investment

reporting form provided by the qualifying business for how to compute the credit.

Attach a copy of the Seed Capital Investment Reporting Form.

Specific line instructions for Schedule 3

(Page 2, Form 38)

Schedule 3 must be completed to identify all beneficiaries of the estate or trust and show the beneficiaries' respective shares of North Dakota income (loss). If additional lines are needed, attach a separate statement.

Except for nonresident individual, estate or trust beneficiaries, the amount of income (loss) to be reported to North Dakota by a beneficiary may differ from the amount reported on Schedule A. Resident individual, estate and trust beneficiaries are subject to North Dakota income tax on their entire share of income, gains and losses, as determined for federal income tax purposes. For corporation, partnership and limited liability company beneficiaries, special rules apply for determining the amount of income (loss) taxable by North Dakota. Contact the Office of State Tax Commissioner for more information.

If a beneficiary's share of income (loss) reported on Schedule A includes interest from U.S. obligations or other securities exempt from state income tax under federal law (including dividends from a mutual fund attributable to investments by the mutual fund in the same kinds of securities), a statement on which the specific securities are identified must be attached to Form 38. In the case of dividends from a mutual fund, the statement must show the name of the fund, the identity of the qualifying securities, and the percentage of income derived from the qualifying securities. This statement is not required if the required information is provided on the federal return that is attached to Form 38. In addition, if a beneficiary is required to file a North Dakota tax return, the beneficiary will be required to attach a similar statement to the North Dakota tax return; therefore, the fiduciary should also provide this information to the beneficiary.

Specific line instructions for Schedule 4

(Page 2, Form 38)

An estate or trust may be eligible for a credit for income tax paid to another state if:

1. It is a resident estate or trust; and,
2. The estate or trust paid income tax to another state on part or all of the same income that is reported to North Dakota for the year. ***For this purpose, "state" means any of the fifty U.S. states, the District of Columbia, or a territory of the U.S.***

The credit is available only if an income tax return is filed with the other state on which an income tax is computed and paid. No credit is allowed based on the amount of the other state's income tax withheld from wages, nor on the amount of estimated tax paid to the other state.

A copy of the other state's income tax return must be attached to Form 38 to obtain the credit.

Payment of income tax to more than one state. If income tax is paid to more than one other state on income that is also reported to North Dakota for the year, a separate Schedule 4 must be completed for each state.

Line 2

Enter the portion of the fiduciary's federal income (on line 1 of Schedule 4) that is reportable to the other state. Disregard any adjustment to the fiduciary's federal income required by the other state's law.

Line 6

Enter the amount of the income tax less any income tax credits (except withholding and estimated tax) as shown on the other state's income tax return.

Line 7

If more than one Schedule 4 is required to be completed, add the separately computed amounts on line 7 of each Schedule 4 and enter the result on line 11, page 1, Form 38.